Supreme Court, U. S.
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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1977

NO. 76-1759

DAYTONA BEACH RACING AND RECREATIONAL FACILITIES DISTRICT and INTERNATIONAL SPEEDWAY CORPORATION,

Appellants,

v.

VOLUSIA COUNTY, et al.,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

MOTION TO DISMISS OR AFFIRM

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MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16, Appellees move the Court to dismiss this appeal, or in the alternative, to affirm the judgment of the Supreme Court of Florida, on the grounds that the judgment rests on an adequate non-federal basis and does not present a substantial federal question.

I.

STATUTES INVOLVED

Appellants challenge the validity of Chapter 73-647, Laws of Florida (1973), which repealed a 1955 tax exemption statute, Section 13 of Chapter 31343, Laws of Florida (1955).

Both the 1955 exemption law (Chapter 31343) and the 1973 repealer (Chapter 73-647) were enacted by the Florida Legislature as Special Acts.

The tax exemption contained in Chapter 31343 was also repealed by General Law in 1971. Section 14 of Chapter 71-133, Laws of Florida (1971), known as the 1971 Tax Reform Act, provides in pertinent part:

> "All special and local acts or general acts of local application granting specific exemption from property taxation are

hereby repealed to the extent that such exemption is granted ...."

II.

STATEMENT

This is the third appeal filed in this Court by Florida taxpayers who object to the elimination of tax exemptions by the enactment of the 1971 Tax Reform Act. That act, enacted as Chapter 71-133, Laws of Florida (1971), and largely codified in Chapter 196 of the Florida Statutes, was a comprehensive revision of Florida's ad valorem tax laws.

The Tax Reform Act severely curtailed the tax exemptions that had been enjoyed by private lessees of Florida lands owned by state and local government agencies. Such exemptions were eliminated by (1) Section 14 of Chapter 71-133, which repealed all Special Act tax exemptions and (2) Section 196.001 (2), Florida Statutes, which subjects the leaseholds of private lessees of government-owned lands to ad valorem taxation.

In two cases prior to this one, private lessees of government-owned lands on Santa Rosa Island, in Escambia County, Florida, challenged the elimination of a tax exemption created by a 1949 Special Act, Chapter 25,810, Laws

of Florida (1949). In both Escambia County cases, the Supreme Court of Florida affirmed the taxability of the plaintiffs' leaseholds. Straughn v. Camp, 293 So.2d 689 (Fla. 1974); Williams v. Jones, 326 So.2d 425 (Fla. 1976).

Appeals to this Court were taken in both Escambia County cases. Both appeals were dismissed for want of a substantial federal question. Camp v. Straughn, 419 U.S. 891 (1974); Williams v. Jones, No. 75-1735, ___U.S.___ (Oct. 4, 1976) In Williams, appellants asserted that the sections of the Tax Reform Act which subjected their leaseholds to taxation denied them equal protection of the laws. The Camp appeal was virtually identical to this one. Appellants there contended that by eliminating their Special Act tax exemption, Section 14 of Chapter 71-133 impaired contract obligations in violation of Section 10, Article I of the United States Constitution.

III.

A.

ARGUMENT

The judgment of the Florida Supreme Court rests on an adequate non-federal basis.

Appellants' characterization of the 1955 statutory tax exemption as "permanent" is contrary to Florida law.

In the judgment appealed from, the Supreme Court of Florida said:

> "In the trial court, appellees also maintained that their leasehold enjoyed tax exempt status as a matter of contractual right. This position does not square with the rule that 'a subsequent legislature has the unquestioned authority to repeal prior tax exemption statutes.'"

In support of this conclusion, the Court cited its decision in the first Escambia County case, Straughn v. Camp, 293 So.2d 689 (Fla. 1974). Noting several changes in Florida legislative policy concerning tax exemptions in recent years, the Court there held that it is "well established that one legislature cannot bind its successors with respect to the exercise of the taxing power . . . ." The Court rejected the view that the statutory tax exemption conferred upon Santa Rose Island properties in 1949 was permanent or perpetual. It said:

> "Merely because plaintiffs' (appellees') leaseholds were originally granted tax exemption and they enjoyed exempt status for a number of years, affords no basis for forever removing and completely immunizing them from taxation . . . . Such exempt status may be changed by a subsequent legislature."

In support of this conclusion, the Court cited its 1965 decision in which it had affirmed the validity of Section 13, Chapter 31343, Laws of Florida (1955), the very exemption statute relied upon by appellants here. Daytona Beach Racing and Recreational Facilities District v. Paul, 179 So.2d 349 (Fla. 1965). That decision judicially sanctioned the exempt status of appellants' racetrack for many years prior to the enactment of the 1971 Tax Reform Act. In adjudging the validity of the exemption under Florida law, the Supreme Court of Florida simultaneously ruled that the exemption was subject to repeal by a future legislature. The Court said:

> "It is axiomatic that a public facility or project declared such by the Legislature and so recognized by the State's highest Court does not lose its tax exempt status where there has been no material change in its public nature or no legislative repeal of its exemption privilege." (Emphases added.)

The Court manifestly viewed the exemption as a special legislative privilege, rather than a contractual obligation. It said:

> "Like the Almighty in all things, the Legislature in certain mundane things 'giveth and taketh away.' Unless and until the Legislature repeals

the tax exemption we hold it must stand." (Emplasis added.)

Appellants' current efforts to thwart the repeal of the exemption by attributing a "permanent" nature to it, are contrary to the authoritative pronouncements of the Supreme Court of Florida which sanctioned the exemption and defined its attributes in the first place.

Although this Court is required to reach an independent judgment as to the existence and nature of the alleged contract, it nevertheless gives great weight to the views of the highest court of the State touching these matters. Dodge v. Board of Education, 302 U.S. 74, 79 (1937). Under Florida law, the tax exemption statute in question clearly is not in the nature of a contract but is merely a legislative privilege subject to repeal by a future legislature. The judgment appealed from rests on an adequate non-federal basis and should therefore be dismissed.

B.

This appeal presents no substantial federal question warranting review by this Court.

Appellants assume that which they must prove: That a contract exists. They argue that contractual obligations have been impaired, but fail to show that a contract was ever made. The

essential facts alleged by appellants are:

a. In 1955, the Florida Legislature enacted Chapter 31343, Laws of Florida (1955), which created the Appellant District. Section 13 of the Special Act provided that "no taxes or assessments shall be levied upon" facilities acquired or constructed in accordance with the Act.

b. In 1955, the Appellant District leased lands from the City of Daytona Beach, Florida.

c. In 1957, the Appellant District sub-leased the lands to the Appellant International Speedway Corporation, which agreed to construct racetrack facilities thereon.

d. In 1958 and 1959, Appellant International Speedway Corporation constructed the racetrack facility at its own expense. (No bonds of any kind were ever issued.)

At no time was any contract made for a perpetual and irrevocable tax exemption. Section 13 of the 1955 Special Act contains no promissory or contractual language of any kind. It does not specify that the tax exemption is permanent. It makes no reference to

the District's future lessee, International Speedway Corporation.

A contract to grant a permanent or perpetual tax exemption must be express; it cannot be created by implication or presumption. Providence Bank v. Billings, 29 U.S. (4 Pet.) 514 (1830). Christ Church v. County of Philadelphia, 65 U.S. (24 How.) 300 (1861). Such a contract must be shown to exist and where it does exist it is never permitted to extend in scope or duration beyond what its terms clearly require. Tucker v. Ferguson, 89 U.S. (22 Wall.) 527, 574 (1875). Here, as in Wisconsin and Michigan Railway Co. v. Powers, 191 U.S. 379, 386 (1903), the Legislature merely used words which may have held out a hope, but did not amount to a covenant. As Justice Holmes there said:

> "The broad ground in a case like this is that, in view of the subject matter, the legislature is not making promises, but framing a scheme of public revenues and public improvement. In announcing its policy, and providing for carrying it out, it may open a chance for benefits to those who comply with its conditions, but it does not address them, and therefore, it makes no promise to them. It simply indicates a course of conduct to be pursued until circumstances or its views of policy change. It would be quite intolerable if

> parties not expressly addressed were to be allowed to set up a contract on the strength of their interest in, and action on the faith of a statute, merely because their interest was obvious and their action likely, on the face of the law."

Exemptions from taxation must be "clear and unmistakable" and any doubt or ambiguity must be resolved in favor of the public. New York Rapid Transit Corporation v. City of New York, 303 U.S. 573, 590-594 (1938). See Dodge v. Board of Education, 302 U.S. 74, 78-79 (1937).

The above cases demonstrate conclusively that the tax exemption granted in Section 13 of the 1955 Special Act is not in the nature of a contract and that the exemption cannot be deemed to be permanent by implication.

Appellants' reliance on this Court's recent decision in United States Trust Co. v. New Jersey, 97 S.Ct. 1505 (1977), is misplaced. That case involved a clear and explicit contract with the States' bondholders. As this Court said:

> "In this case the obligation was itself created by a statute, the 1962 legislative covenant. It is unnecessary, however, to dwell on the criteria for determining whether state legislation gives rise to a contractual obligation. The trial court found

> . . . and appellees do not deny, that the 1962 covenant constituted a contract between the two States and the holders of the Consolidated Bonds issued between 1962 and the 1973 prospective repeal. The intent to make a contract is clear from the statutory language . . . ." (Emphasis added.)

Here, the intent to make a contract is totally absent from the statute. Moreover, in this case no bonds were ever issued and no funds were ever borrowed by the State or any public agency.

Similarly, a clear, express contract existed in the case of New Jersey v. Wilson, 11 U.S. (7 Cranch) 164 (1812). Referring to New Jersey v. Wilson, this Court said in Providence Bank v. Billings, 29 U.S, (4 Pet.) 514, 563 (1830), "[I]n that case the stipulation exempting the land from taxation was made in express words.

The 1955 Special Act did not constitute a contract with the Appellant District. As a public agency created by the Legislature, the District does not stand in a contractual relationship with the State and the 1955 Special Act which created it is not in the nature of a contract. See City of Trenton v. State of New Jersey, 262 U.S. 182 (1923); East Hartford v. Hartford Bridge Co., 51 U.S. (10 How.) 511, 534-536 (1850). Municipal corporations and other political

agencies of the State are subject to the control and supervision of the Legislature. As stated in Hunter v. Pittsburgh, 207 U.S. 161, 178-179 (1907):

> "The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charters nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the Federal Constitution. (Emphasis added.)

This case is factually and legally indistinguishable from the case of Straughn v. Camp, 293 So.2d 689 (Fla. 1974), appeal dismissed, 419 U.S. 891 (1974). In that case, the taxpayer-lessees advanced the same impairment of contract argument against the 1971 Tax Reform Act which appellants repeat here. The Camp appeal was dismissed for want of a substantial federal question and this appeal should be likewise dismissed. See the Supreme Court of Florida's decision in Straughn v. Camp, 293 So.2d 689 (Fla. 1974), for the facts and statutes considered in that case. The language of the Special Act tax exemptions in both cases is remarkably similar. In the Camp case, the exemption statute provided:

> "Section 2. All of the real and personal property owned, controlled or used by Escambia County, Florida, or Santa Rosa Island Authority under or by virtue of said Chapter 24,500, Laws of Florida, Acts of 1947, or for any of the purposes thereof, including real and personal property rented or leased to others by said county or said Santa Rosa Island Authority, shall be exempt from state, county, municipal and all other ad valorem taxes of every kind." (Emphasis added.)

The exemption statute in this case provides that "no taxes or assessments shall be levied upon" facilities acquired or constructed in accordance with the act. Neither the statute in this case, nor the one in the Camp case, contains any language whatsoever expressing a contractual promise to grant a permanent tax exemption.

CONCLUSION

The judgment of the Supreme Court of Florida rests on an adequate non-federal basis and this appeal presents no substantial question. The appeal should be dismissed for want of a substantial federal question on authority of Camp v. Straughn, 419 U.S. 891 (1974).

Respectfully submitted

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CERTIFICATE OF SERVICE

I, William C. Sherrill, Jr., a member of the Bar of the Supreme Court of the United States, and of counsel for Appellees herein, hereby certify that I have this day served three (3) printed copies of the foregoing Motion to Dismiss or Affirm on the Appellants herein, by depositing same in a United States Post Office with first class postage prepaid addressed to counsel of record for the Appellants as follows:

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